

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3169 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No

2. To be referred to the Reporter or not? Yes :

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No :

T.R. ASSOCIATES

Versus

STATE OF GUJARAT

Appearance:

MR JITENDRA M PATEL for Petitioner
Ms.Harsha Devani, A.G.P. for Respondents No. 1 & 2
Mr.M.C.SHAH for Respondent No. 3
MR RJ OZA for Respondent No. 4
MS PAURAMI B SHETH for Respondent No. 6

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 17/11/1999

C.A.V. JUDGEMENT

1. The prayer of the petitioner is to quash the order dated 26.6.1995, Annexure : O to the writ petition, passed by the State Government in Revision and to confirm the communication dated 1.1/2.1998 contained in the order of the State Government dated 3.11.1991, Annexure : F,

and to quash all proceedings taken in pursuance of State Government orders dated 26.6.1995.

2. Brief facts are as under :

The land development scheme was framed by the Government for development and improvement of Khadi land situated in Bharuch near Civil Hospital. It was done under the Government resolution dated 24.6.1986 read with Collector's order dated 21.7.1986. Initially it was decided that lease of this land be given to G.N.F.C. for the purposes of reclaiming the land with industrial waste known as fly ash. It was also decided to form a committee for the purpose of disposing of the land by public auction. The land was reclaimed by G.N.F.C. Thereafter it was decided to sell the said land to private parties for the development with certain conditions. The Committee for disposal of land was formed under the Resolution of the Government. The committee made repeated efforts for disposal of the land by public auction, but on several occasions it failed. First auction was held by inviting tenders from public on 22.5.1987, but due to unavoidable circumstances auction could not materialise. Second auction was made on 6.6.1987, but only one person filled up tender and that too only for one plot No.5. The entire land was divided into 50 plots. Since the tender was received only for one plot further action could not proceed. The third attempt was made on 1.7.1987. Public auction was held, but since up-set price was higher no body participated in this public auction. Thereafter tenders were invited on 28.7.1988. This also could not materialise because the Bharuch Nagar Palika obtained stay order against the auction proceeding. On 11.9.1989 tenders were again invited but only one person came forward hence it was not accepted. The Government was approached in the matter and by letter dated 2.3.1990 he directed to auction the land by public auction. As such public auction was held on 20.11.1990. Up-set price was high hence nobody offered to buy the land. Thereafter the Government had directed through its order dated 27.12.1990 to dispose of the land by inviting tenders from the public. In view of this invitation the petitioner filled up tender considering the lay out plan and the land which was to be left at the rate of Rs.90/per sq.mtrs. One Parikh & Parikh Engineers had also filled-up tender at the rate of Rs.84/- per sq.mtrs. Both the tenders were sent to the Government for approval. The Government by its order dated 3.11.1991 accepted the tender of the petitioner being highest. However, the Government directed to call the person personally for the purposes of raising the

price and also to inquire whether some other Government Department was prepared to take the land or not. The collector in response to this letter called the petitioner and Parikh & Parikh Engineers on 28.1.1992. Parikh & Parikh Engineers was not willing to raise the price beyond Rs.84/- per sq.mtrs., but the petitioner was willing to enhance the price from Rs.90/- to Rs.95/- per sq.mtr. The Telephone Department was also contacted by the Collector. This Department was not willing to purchase the land. Accordingly the meeting of the Committee was held on 22.1.1992 and after discussion the Committee decided to accept the tender in view of the Government order dated 3.11.1991. The petitioner, in view of this acceptance, under orders of the Collector, was directed to deposit Rs.9,93,890/- which was deposited by the petitioner through three challans. Final order of the Collector was passed on 1.1/2.1992 granting the said land to the petitioner vide Annexure : F. Possession of the land was handed over to the petitioner on 5.2.1992 and Sanad was also executed in favour of the petitioner vide Annexure : H. The petitioner issued receipt of receiving possession of the land vide Annexure : G. Entries were made in the name of the petitioner in City Survey records vide Annexure : I.

3. The allegation of the petitioner is that the respondent No.3 Suresh Laxmidas Mehta who was not interested in the subject matter of this land and who had no locus-standi to challenge the order passed in favour of the petitioner, preferred revision before the Secretary (Appeals) under Sec.211 of the Bombay Land Revenue Code challenging the order of the Collector dated 1.1/2.1992. Since this order was passed essentially by the State Government which was communicated by the Collector through this order, according to the petitioner, the Secretary (Appeals) had no jurisdiction or authority to revise the order of the state Government inasmuch as he is also exercising the powers of the State Government under Section 211 of the Bombay Land Revenue Code. Since the point of jurisdiction goes to the root of the matter the petitioner filed Special Civil Application No.2413 of 1992 taking the plea of jurisdiction. However, the said writ petition was withdrawn with liberty to file fresh writ petition in case the revision is decided against the petitioner. Since the revision was decided on 9.12.1993 against the petitioner this writ petition has been filed. According to the petitioner there was also communication from the Revenue Department that the Secretary (Appeals) had no power or authority to revise the order of the State Government, still the revisional Authority proceeded to

hear and decide the revision against the petitioner on 26.6.1995. The copy of the said order was received by the petitioner in last week of July, 1995. This order has been challenged in the instant writ petition by the petitioner mainly on the ground that the order of the Revisional Authority is without jurisdiction and illegal.

4. The respondent No.1 in his counter Affidavit has maintained that the order under challenge is perfectly legal and that the revisional Authority could exercise jurisdiction under Section 211 of the Bombay Land Revenue Code and since the Collector did not comply with the directions of the Government to seek reasonable enhancement of price of land by private negotiation and to inquire whether the land was required by any other Government Department and since the Collector failed to comply with this second direction his order was rightly set aside in revision.

5. The Collector, respondent No.2, in his short counter affidavit mentioned that this land was required by the Executive Engineer, Gujarat Water Supply and Sewerage Board, Manager Gas Authority of India and Regional Officer, Pollution Control Board. The Executive Engineer inquired from the aforesaid offices whereupon the Gujarat Pollution Control Board intimated by letter dated 17.12.1998 that the said land was not suitable for its need. The Executive Engineer, Public Health Construction Division, Gujarat Water Supply and Sewerage Board informed by letter dated 18.12.1998 that they were agreeable to purchase the land at the price fixed by the Government.

6. The respondent No.3 in his lengthy counter Affidavit has taken stand that the impugned order is perfectly legal and justified and that the action of the Collector selling the land to the petitioner at a throw-away price is illegal and no effort was made by the Collector to contact other department of the Government who were in need of the land.

7. Learned Counsel for the petitioner Shri J.M.Patel contended that the respondent No.1 has no locus-standi to file revision before the Authority and as such revisional order is without jurisdiction. He also contended that the revisional authority had no jurisdiction to entertain revision from respondent No.3 who was not a party aggrieved from the order of the Collector in latters and spirit inasmuch as he was never a party to any auction nor he ever filled up any tender in response to Collector's invitation for tender. He also pointed out

that so many attempts were made between 1987 to 1992 to get the land sold but the respondent No.3 never came forward and showed his willingness to purchase the land at the up-set price fixed by the Government. According to him he has been introduced by some builder who has interest adverse to the interest of the petitioner. He also pointed out that the revision was allowed and the order was quashed in public interest by the revisional authority and such order is patently illegal because the revision by third party under Sec.211 of the Bombay Land Revenue Code is not a public interest litigation hence such revision could not be allowed in public interest. I find substance in this contention. On the top of the order Annexure : O it is mentioned that it was a revision application under Sec.211 of the Bombay Land Revenue Code where the revisionist is shown to be Sureshbhai Laxmidas Mehta, who is respondent No.3 in this petition. It is, therefore, *prima facie* clear that the revisional Authority treated this revision to be revision filed by the respondent No.3 of this writ petition and it was not a *suo-motu* revision initiated by the revisional Authority. In *Rajendra Sing v/s. Chakravarti Malhotra*, reported in A.I.R. 1981 Delhi 48, the Delhi High Court held that such actions are not proceeding in *rem* rather these are proceedings between the Government who is holding auction and between the bidders at the auction as intending purchasers. The rest of the persons who have not offered any bid in auction are excluded and the auction thus became a proceeding between two sets of parties and they were not proceedings in *rem*. If the auction sale was confirmed the third party has no *locus-standi* to challenge such auction sale.

8. As against this Shri M.C.Shah for the respondent placing reliance upon a case of *Jagan Singh v/s. State Transport Appellate Tribunal, Rajasthan*, reported in A.I.R. 1980 Raj. 1, contended that if the order of the Collector was without jurisdiction and illegal the revisional Court could have set aside the said order and if the order of the revisional Authority is set aside and the writ petition is allowed it would result in restoring the illegal order of the Collector. He further contended that since the order of the revisional Authority has done substantial justice between the parties it requires no interference. The question whether the order has done substantial justice between the parties will be examined subsequently in this judgment. So far as the point of *locus-standi* of the respondent No.3 is concerned Shri Shah contended on the basis of pronouncement in *G. Rami Reddey v/s. State of Andhra Pradesh*, reported in A.I.R. 1963 A.P. 212 that a tax payer who has actually

contributed to the municipal fund and is a beneficiary of that fund has locus-standi to maintain an application under Article 226 of the Constitution of India. However, in that case the petitioner was not only a tax payer, but a person at whose instance the Director of Municipal Administration had instructed the Municipal Councillor to lease the theatre in question by public auction and the petitioner was also very much interested in bidding in that auction and if possible getting a lease in his favour. Thus, in this case proposal to lease the theatre was initiated on the motion of the petitioner. No doubt he was a tax payer, but he was also interested in bidding at the auction and was further interested in getting the lease in his favour. On these facts the petitioner could be said to be interested in the subject matter and as such he had locus-standi to file writ petition. On the other hand, in the case before me, the respondent No.3 was never interested in purchasing the land. He may be a tax payer, but every tax payer can not challenge the order of the Collector in the manner it was done by the respondent No.3 before the Revisional Authority.

9. I am, therefore, of the opinion that the respondent No.3 had no locus-standi to file revision under Section 211 of the Bombay Land Revenue Code. I am further of the opinion that the revision could not be allowed in public interest because it was not a proceeding in the nature of public interest litigation. Few cases were cited by the learned Counsel for the petitioner on the nature of public interest litigation, but I do not think it necessary to discuss those cases because neither the proceeding in revision was in the nature of public interest litigation nor this petition has been filed as public interest litigation.

10. The revisional Authority could not have quashed the order of the Collector taking shelter behind the public interest.

11. Shri M.C.Shah further contended that even if the respondent No.3 had no locus-standi to file revision his application could be treated by the revisional Authority as an intimation of illegality committed by the Collector and the revisional Authority under Sec.211 of the Bombay Land Revenue Code could have taken suo-motu action and the order of the revisional Authority may be considered to be an order as a result of exercise of suo-motu powers under Sec.211 of the Bombay Land Revenue Code. This contention also cannot be accepted because in the impugned order the revisional Authority has nowhere indicated that it was proceeding in exercise of suo-motu

powers. Even if it was suo-motu action under Sec.211 of the Bombay Land Revenue Code the revisional authority should have exercised suo-motu powers within a reasonable time from the date of the order of the Collector and not after considerable delay. The Division Bench of this Court in Bhagwanji Bawani Patel v/s. State of Gujarat, reported in 12 G.L.R. 156 has laid down that though no period of limitation is prescribed under Sec.211 of the Bombay Land Revenue Code, this power of revision must be exercised in reasonable time and the length of reasonable time must be determined by the facts of the case and the nature of the order which is being revised. In this case suo-motu action was taken after seven years and such action was held to be illegal in the aforesaid case. In the case before me after negotiation between the committee and the petitioner held on 22.1.1992 it was decided to accept the tender of the petitioner in view of Government order dated 11.3.1991. The petitioner paid the entire price on 25.1.1992 under three challans. Final order of the Collector was passed on 1.1/2.1992. The possession of the land was delivered to the petitioner on 5.2.1992. Sanad was executed in his favour. The petitioner executed receipt for receiving possession. Thus, everything was done and sale was completed between 20.11.1990 and 5.12.1992 whereas the impugned order was passed on 26.6.1995. The delayed action of this nature renders the impugned order invalid.

12. Another contention of Shri J.M.Patel has been that the revisional order is illegal and without jurisdiction because the State Government in exercise of powers under Sec.211 of the Bombay Land Revenue Code could not have sat in Appeal over the Collector's order nor the order could be reviewed by the State Government. For all purposes the order to accept the petitioner's highest tender was passed by the Government on 11.3.1991 and at the most this order was communicated to the Collector hence the revisional Authority could not exercise fresh power of revision over the decision of the Government and if it was done it amounts to reviewing the earlier order of the Government and no such power of review is conferred under the Bombay Land Revenue Code. In Patel Narshi Thakershi v/s. Pradyumansinghji Arjunsinghji, reported in A.I.R. 1970 SC 1273, the Apex Court has held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. In my opinion since there is no provision in the Bombay Land Revenue Code empowering the State Government to review its own order the impugned order which practically amounts to reviewing the earlier order of the Government dated

11.3.1991 is apparently illegal and without jurisdiction. It cannot be said that the revisional Authority has done substantial justice by passing the impugned order. The contention of Shri M.C.Shah that the impugned order has done substantial justice and has not permitted perpetuation of illegallity in these circumstances cannot be sustained.

13. It appears from the record that the revisional Authority under the impugned order has not acted judicially and has also ignored the direction of the Government that he had no power to hear and decide the revision. Annexure : M can be referred which is a communication from the Collector to the petitioner that with reference to his applications dated 10.1.1994 and 26.5.1994 the Revenue Department of Government of Gujarat has given opinion that the Secretary (Revenue Department)(Appeals) can not pass or grant any order or stay order in such revision. Annexure : N is the communication from the Revenue Department to the Collector wherein the Collector was informed that the Secretary (Appeals), Revenue Department has no appellate jurisdiction. The collector had sent copy of this letter and the Revenue Department also sent copy of this letter to the Secretary (Appeals), Revenue Department. Still without caring to see this communication the Revisional Authority proceeded to hear and decided the revision on merits. It is not only illegal action but also an action which speaks volumes regarding insubordination on the part of the officer deciding such revision in face of direction to the contrary given by the Government that he has no jurisdiction to decide any Appeal or Revision against the order of the Collector on the facts and circumstances of the case.

14. Annexure : F is order of the Collector dated 1.1/2.1992. This order shows that an application was made to the Government for approval of highest tender of the petitioner and the Government accorded approval to accept tender offer of Rs.90/- per sq.mtr. being the highest out of the two. This order was passed by the Government on 11.3.1991. As such this was actually final order of the Government and it could not be revised by Secretary (Appeals) inasmuch as the two Authorities enjoyed the said powers of revision under Section 211 of the Bombay Land Revenue Code. The order of the Government could not be revised or reviewed by Secretary (Appeals) in these circumstances. It cannot be said to be conditional acceptance of the highest bid simply because a direction was given to negotiate further for fetching higher price from the person submitting tender

and also by inquiry from Government Departments whether they were willing to purchase the land under up-set price of the Government. Once the tender of the petitioner was accepted by the Government there was no justification for the Government to impose these two conditions. Still the Collector made compliance of these conditions and made negotiation between the two tenderers. One tenderer did not respond favourably because his earlier tender was already at a lower price of Rs.84/- per sq.mtr. The petitioner agreed to enhance the price by Rs.5/- per. sq.mtr. which cannot be said to be artificial enhancement. No malafide can be attributed to the Collector because he was not the Sole Authority to accept enhanced tender price of the petitioner. On the other hand the matter was to be examined by a committee and the committee after examining all the matters took a decision to accept the enhanced tender of the petitioner keeping in view of the directions of the Government in its order dated 11.3.1991. Even at that time the respondent No.3 did not come forward to offer higher price than that offered by the petitioner.

15. The Collector also made efforts to ascertain the needs of the other Government Department. No Government Department was willing to purchase the entire land at the up-set price. This is evident from paper No.182-A, Gujarat Pollution Control Board wanted only 3000 sq.mtrs. whereas Gas Authority of India requested for 500 sq.mtrs. and Gujarat Water Supply and Sewerage Board wanted 1351 sq.mtrs. There was no direction of the Government to sell the land to various departments piece-meal. The Gujarat Pollution Control Board, however, refused to take this land as it was not suitable for its office vide paper No.183-A. Paper No.184-A shows that Gujarat Water Supply & Sewerage Board, Bharuch wanted to purchase the land next to the New Civil Hospital and opposite Shalimar talkies at the Government price. But this does not indicate clearly it referred to the land sold to the petitioner. Learned Counsel for the petitioner informed that the land opposite Shalimar talkies was different land and it cannot be said to be land sold to the petitioner simply because it is mentioned that the land is next to New Civil Hospital. The Telephone department also did not agree to purcahse the land as it was not suitable for its office. Thus, it can be said that the Collector made compliance of the directions of the Government in its order dated 11.3.1991 and that he was not expected to do anything more.

16. It may also be mentioned that it has to be seen in what manner it was decided to dispose of the land in

question. For this Annexure : A dated 21.7.1986 can be referred. It provides that the land shall be reclaimed and disposed of according to various conditions mentioned in this order. Condition No.2 shows that disposal of reclaimed land shall be made by a public auction. Thus, this was the only decision namely reclaimed land shall be disposed of by public auction and not in any other manner. Condition No.3 shows that for disposal of land a committee shall be constituted consisting the Collector, Prant Officer and representative of G.N.F.C. The decision of the committee with respect to the mode of disposal of the land with regard to size of plot and its use shall be final. The 4th condition is that disposal of all lands so reclaimed shall be made only by public auction. Thus, from conditions No.2 & 4 it is clear that after the land was reclaimed it should be disposed of only by public auction and in no other way and such disposal was to be supervised by the committee consisting of Collector, Prant Officer and representative of G.N.F.C. and the decision of the committee shall be final as contained in condition No.3. Thus, if after the order dated 11.3.1991 of the State Government the Committee considered the question and auctioned the land in favour of the petitioner, it cannot be said that the committee acted in violation of the earlier order contained in Annexure : A. As such the revisional authority was in error in quashing the order of the Collector passed in favour of the petitioner.

17. On the basis of letter dated 16.5.1991, Annexure : I, Page 170, Shri M.C.Shah contended that at one time the Area Manager, Telecommunication was informed to deposit Rs.29,29,360/- for purchasing this land and as such the land could not be sold at a price less than this price. Shri Shah also showed willingness of respondent No.3 to purchase the land at this price. However, his willingness is of no consequence because this Court cannot grant sale certificate in favour of the respondent No.3 in this writ petition. Since the Telecommunication Department showed its disinclination at a later stage to purchase this land consequently Annexure : I, page : 170 cannot be used to impute malafide to the Collector.

18. Shri M.C.Shah further contended that a land worth Rs.29,29,360/- has been sold to the petitioner at a throw-away price of Rs.9,53,890/- to the petitioner, hence it is patent illegality and loss to the public exchequer, hence interreference in this petition is required. He also contended that respondent No.3 in order to show his bonafide has deposited a sum of Rs.29,29,360/- with Registrar of this Court to show that

the land can fetch this price. However, this action of the respondent No.3 cannot be a ground for quashing the order of the Collector which was passed in the line of decision taken by the Committee. The matter should be viewed from another angle also. The petitioner deposited a sum of Rs.9,53,860/- by three challans on 25.1.1992, still the petitioner has not been able to use this land for his purpose. On the other hand the Government has been benefiting from the deposit of the aforesaid sum made by the petitioner. If the petitioner's money would not have been blocked he would have earned interest over this amount and during this period of about seven years if the money would have been given on higher interest the amount would have certainly increased. Consequently it cannot be said that the Government has been looser in any way.

19. In view of aforesaid discussions it can be concluded that in the first place the respondent No.3 had no locus-standi to file revision under Section 211 of the Bombay Land Revenue Code. In the second place the revisional authority had apparently no jurisdiction to entertain such revision over the order of the Government which exercise concurrent power of revision. Thirdly the revisional authority did not act suo-motu under Section 211 of the Bombay Land Revenue Code nor it acted within reasonable time. It was not a case where the order of the Collector or the Government could not have been in the knowledge of the revisional Authority. Thus, since action was not taken by the revisional Authority suo-motu within a reasonable time his action cannot be confirmed. On merits also the order of the revisional Authority is apparently illegal. No irregularity has been committed by the Collector or the Committee supervising disposal and sale of the land in question through public auction. As such the order of the revisional Authority has to be quashed.

20. The result, therefore, is that writ petition succeeds and is hereby allowed. The impugned order of revisional Authority, Annexure : O, dated 26.6.1995 is hereby quashed. Interim order dated 2.5.1996 is hereby vacated. No order as to costs.

Since the petition has been decided today and the interim order has been vacated in this judgment, the Civil Application No.3713 of 1999 has become infructuous and is rejected as infructuous.

sd/-

Date : November 17, 1999 (D. C. Srivastava, J.)

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